

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

SEP 28 2009

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

CITY OF SAN ANTONIO, TEXAS on )  
behalf of itself and all other similarly situated )  
Texas Cities )

Plaintiffs )

v. )

CIVIL NO. SA-06-CA-381-OG

A CLASS ACTION

HOTELS.COM, , et al )

Defendants )

**SUPPLEMENTAL ORDER ON CLASS CERTIFICATION**

Pursuant to Fed.R.Civ.P. 23(c)(1)(C), the Court hereby supplements its prior order on class certification to clarify the claims asserted on behalf of the class of 173 cities, as previously defined in its order filed on May 27, 2008. (Dkt. # 248).

The City of San Antonio filed its First Amended Complaint on October 31, 2006 (Dkt. 74). This was the live pleading when the Court certified the class, and the claims asserted against all Defendants included:

Count I: Violations of the Texas Tax Code and Municipal Ordinances

Count II: Conversion

Count III: Declaratory Judgment action

Also asserted were requests for relief that included compensatory damages, "restitution and disgorgement of all monies due and owing," a declaration of the parties' rights, duties and obligations under the ordinances; costs of suit, prejudgment interest, penalties and attorneys' fees.

The Court thereafter certified the class of 175 cities on these claims and issues, and defined the class as those whose ordinances contained the same "control" language and did not require the exhaustion of administrative remedies. (Dkt. # 248).<sup>1</sup>

Subsequent to the Court's class certification order, the City of San Antonio, in its capacity as class representative, filed "*Plaintiffs' Supplement to First Amended Complaint*" and specifically entitled the pleading as a "*Class Action Complaint*." (Dkt. # 273). In that pleading, *Plaintiffs* asserted a fourth cause of action and additional requests for relief, as follows:

Count IV:     Equitable Claims/Remedies

- A.     Unjust Enrichment
- B.     Constructive Trust
- C.     Money Had and Received

*Plaintiffs* sought both compensatory and punitive damages, both prejudgment and post judgment interest, and reiterated the requests in their amended complaint. (Dkt. # 273).

Although Defendants have suggested that the supplemental class action complaint asserts individual claims solely on behalf of the City of San Antonio, it is clear that the pleading was intended to assert claims on behalf of the entire class *as well as* the City of San Antonio on behalf of itself. The claims set forth in the supplemental pleading arise from the same alleged misconduct or business practices, and the absent class members are entitled to the same relief, if any, that the City of San Antonio is entitled to.

For this reason, the Court supplements its prior order on class certification to clarify that the claims asserted in *Plaintiffs' Supplement to First Amended Complaint* shall be considered as


---

<sup>1</sup>Two cities opted out, leaving a class of 173 cities.

claims of the entire class.

IT IS SO ORDERED.

SIGNED this 28 day of September, 2009.

A handwritten signature in black ink, appearing to read "Orlando L. Garcia", written over a horizontal line.

ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE